

**BEFORE THE INDIANA EDUCATION  
EMPLOYMENT RELATIONS BOARD**

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INDIANA EDUCATION EMPLOYMENT  
RELATIONS BOARD

CARMEL CLAY EDUCATION  
ASSOCIATION and BRIAN LYDAY,

Petitioners,

and

CARMEL CLAY SCHOOLS,

Respondent.

CASE NO. 11-12-04-3060.

**COMPLAINT OF UNFAIR PRACTICE  
AND REQUEST FOR INTERLOCUTORY RELIEF**

Come now the Petitioners, Carmel Clay Education Association and Brian Lyday, by counsel, and for their Complaint of Unfair Practice and Request for Interlocutory Relief, hereby state as follows:

1. Petitioner, Carmel Clay Education Association ("Association"), is a "school employee organization" as that term is defined by Ind. Code § 20-29-2-14, and is located at 6910 North Shadeland Avenue, Suite 100, Indianapolis, IN 46220, Tel: (317) 576-0008.

2. Petitioner, Brian Lyday ("Lyday"), is a "school employee" as that term is defined by Ind. Code § 20-29-2-13, and is the President of the Association. Lyday's mailing address is P.O. Box 796, Carmel, IN 46802, Tel: (317) 577-4585.

3. Respondent, Carmel Clay Schools ("School Corporation"), is a "school employer" as that term is defined by Ind. Code § 20-29-2-15, and is located at 5201 East 131<sup>st</sup> Street, Carmel, IN 46033, Tel: (317) 844-9961.

4. The Attorney for the Petitioners is Eric M. Hylton of Riley Bennett & Egloff, LLP, 141 East Washington Street, Fourth Floor, Indianapolis, IN 46204, Tel: (317) 636-8000.

5. The Association is the "exclusive representative" of the school employees as that term is defined by Ind. Code § 20-29-2-9.

6. The Association and the School Corporation are currently at statutorily mandated impasse in negotiations for a contract for the 2012-13 school year.

7. Mediation ordered by IEERB was unsuccessful in getting the parties to agree to contract terms.

8. The Association and the School Corporation submitted their Last Best Offers ("LBO") to each other on November 16, 2012, and submitted their LBO to IEERB on November 18, 2012.

9. The parties are waiting for the fact-finding hearing to be scheduled.

10. While waiting on fact-finding to commence, the Association and Lyday became aware of communications being made by school board members and administrators directly to teachers addressing bargaining issues.

11. The Association and Lyday believe that the School Corporation is bypassing the Association with the intended result that the status of the bargaining team, and therefore the exclusive representative, be undermined.

12. These communications directly with teachers include an e-mail (Exhibit A) from school board member Andrew Klein to teachers at Prairie Trace Elementary directly addressing negotiations, that states:

From: Andrew Klein (board member)  
Sent: Wednesday, November 14, 2012 7:03 PM

Dear Mrs. O'Malia and the Teachers at Prairie Trace,

Thank you for your notes. The contract negotiation process is not easy, and I genuinely appreciate that you have taken the time to reach out for facts and information. As the board liaison to the district's bargaining team, I am responding on behalf of all my colleagues.

At the outset, I should note that board members must exercise caution in communicating with faculty on this topic. By law, the CCEA represents teachers in bargaining with the district, and it would be inappropriate for me to bypass the association's role in the process. That said, it is important that \*all\* members of the public have an accurate understanding of how we are proceeding. From the board's perspective, it also is important that people know we are concerned with compensating our employees fairly. In addition, we want people to know that we are spending tax dollars wisely, with the interests of students at heart.

To facilitate this communication, the board has been providing regular updates on the status of negotiations at our public meetings. We have posted information from these updates on the district's website and, if you have not reviewed this, I would urge you to do so now: <http://www1.ccs.k12.in.us/district/school-board/negotiations>.

Most of the material will speak for itself. But allow me to highlight a few key points.

First, Indiana law regarding collective bargaining has changed dramatically since we entered our last contract. The board has been very firm in its view that it will not deviate from state guidance on what is "bargainable," as doing so would risk having the state impose serious sanctions on the district. (See slide #2 in the presentation from our legal counsel at the August board meeting: [http://www1.ccs.k12.in.us/uploads/attachments/0001/1305/08-27-12\\_Carmel\\_Bargaining\\_Presentation.pdf](http://www1.ccs.k12.in.us/uploads/attachments/0001/1305/08-27-12_Carmel_Bargaining_Presentation.pdf) )

Second, even though our current contract has expired, the board has committed to continuing past practice on non-bargainable issues, without making any changes until it gathers feedback in an open process. Our board president, Layla Spanenberg, made this clear in a statement at our September board meeting: <http://www1.ccs.k12.in.us/district/school-board/Sept-Aug-Updates>

Third, the board has made a very significant financial offer to the teachers' association. We estimate the offer to be worth \$3.4 million \*more\* than we will be receiving in additional state funding this year, which means that the total financial offer is between \$5-6 million. My colleague, Greg Phillips, explained

this during our October board meeting. His full statement can be found here: <http://www1.ccs.k12.in.us/district/school-board/negotiations>. I doubt there are many (if any) other districts in the state that have made financial offers of this magnitude for the current year.

Finally, it is important to emphasize that the board cannot give any of this to our teaching staff without agreement from the association. If we cannot reach an agreement, a fact finder (essentially an arbitrator) will choose between the board's last proposal and the CCEA's last proposal. However, as Mr. Phillips explained in his statement, these last proposals \*cannot\* include "deficit spending." This means that any contract imposed by the fact finder will be considerably less lucrative than what the board has currently proposed.

I hope all of this helps. I can assure you that every member of the board and administration has nothing but admiration and respect for the incredible work that our teachers do every single day, so please accept our thanks for all you do in the classroom and beyond.

Best,

-Andy  
Andrew R. Klein  
Carmel Clay School Board

13. The links in the communication from school board member Klein took teachers to several documents dealing with the School Corporation's position on collective bargaining. (True and accurate copies of these documents are attached hereto as Exhibits B-H).

14. On November 26, 2012, members of the Association organized outside the school board meeting scheduled for that evening in an effort to get a fair contract.

15. On November 27, 2012, the Principal at Towne Meadow Elementary sent an e-mail (Exhibit I) to all certified staff at the school stating:

From: Tim Phares  
Sent: Tuesday, November 27, 2012 7:33 AM  
To: Towne Meadow Certified Staff  
Cc: Natalie Deitsch  
Subject: Information regarding negotiations

All,

Good morning!

Last night I attended school board meeting and wanted to share with you information regarding negotiations. Many of you have had questions and I wanted to share with you several documents that were shared last evening.

The link below is Andy Klein's comments in a PDF. Item 2, starting at the bottom of page 3, is where many questions have surfaced. This is not new information, but it is worth noting based upon your questions.

[http://www1.ccs.k12.in.us/district/downloads/cms\\_block\\_file/75005/file/92217](http://www1.ccs.k12.in.us/district/downloads/cms_block_file/75005/file/92217)

CCS Website with information regarding negotiations.

<http://www1.ccs.k12.in.us/district/school-board/negotiations>

If you have any questions, please let me know.

Thanks,  
Tim

Tim Phares  
Principal

16. The e-mail from Principal Phares included links to documents attached hereto as Exhibits B and D.

17. Also on November 27, 2012, the Principal at Smoky Row Elementary sent an e-mail (Exhibit J) to "SRE Staff" stating:

From: Kim Barrett  
Sent: Tuesday, November 27, 2012 2:10 PM  
To: SRE Staff  
Subject: FW: Negotiations Fact Sheet

THANKS to all in attendance last night at the CCS Board meeting.

I heard we were represented and applauded ☺ YEAH for US!

I am sorry that I missed both the loud applause and the update on the CCS Negotiations status.

I found the report that was given last night on the front page of the CCS website. I would encourage all of you to read and be informed.

On the web page you will find the CCS Board Best Offer as well as the Last Best Offer and important deadlines that affect all of us.

I have also attached a fact sheet that I found helpful.

Kim Barrett  
Principal  
Smoky Row Elementary  
Carmel, Indiana 46032  
317-571-4084 ext. 1702  
Fax-317-571-4088

18. The Fact Sheet that Principal Barrett refers to is attached hereto as Exhibit H.

19. On November 28, 2012, the Principal at West Clay Elementary sent an e-mail (Exhibit K) to "WCE All Staff" stating:

From: Jennifer Szuhaj  
Sent: Wednesday, November 28, 2012 9:23 A.M.  
To: WCE All Staff  
Subject: FW: Negotiations Fact Sheet

Staff,

At the board meeting Monday, Mr. Klein provided an update on the CCS negotiations status. You can read that report on the front page of the CCS website. I would encourage all of you to read it and be informed. On the web page you will find the CCS Board Best Offer as well as the Last Best Offer and the difference between the two, as well as important deadlines that affect us all.

I have also attached a fact sheet that I found helpful.

Jennifer Szuhaj  
Principal, West Clay Elementary

20. The Fact Sheet that Principal Szuhaj refers to is attached hereto as Exhibit H.

21. On November 29, 2012, the Principal at Forest Dale Elementary sent an e-mail (Exhibit L) to "FDE Staff" stating:

From: Deanna Pitman  
Sent: Thursday, November 29, 2012 11:22 AM  
To: FDE STAFF  
Subject: Papers in workroom

Staff,

I have put copies of the recent proposal and School Board member's comments from the other night out for people to read. Copies have been removed even after I wrote to not remove them from the workroom. Please return these to the workroom. If you would like to read them and need more time, I can certainly give you a copy but they are also located on the Carmel Website.

Please let me know if you have any questions!

Thanks,

Mrs. Deanna Pitman  
Principal  
Forest Dale Elementary School  
10721 Lakeshore Drive West  
Carmel, IN 46033  
(317) 844-4948 ext. 1402

22. It is not known whether these principals were instructed to communicate such information to their staffs and/or if there were other principals in the School Corporation who made similar communications with staff.

23. In several school buildings, documents referenced in this Complaint were left out on tables in teacher's lounges by administrators for teachers to read. (Pictures are attached hereto as Exhibit M).

24. On November 29, 2012, the School Corporation sent out an e-mail (Exhibit N) to all staff that was a Carmel Clay Schools School Board Meeting Summary that had links to Exhibits B, C and D attached hereto.

25. On November 30, 2012, the School Corporation sent out an e-mail (Exhibit O) to all staff that was titled "CCSpotlight 11.30.12" that contained a "Teacher Contract Negotiations Update" that had links to Exhibit B attached hereto.

26. On November 29, 2012, Superintendent Jeff Swenson spoke at a district wide department chair meeting where it is believed he told department chairs that while they could not

have conversations that would encourage teachers not to support the Association, they could talk to teachers about the Fact Sheet which is attached hereto as Exhibit H.

27. As a result of the School Corporation's actions, the Association has been receiving pressure from members of the bargaining unit asking why the Association is not taking the School Corporation's "Best Offer" and if the teachers will be allowed to vote on whether to take the School Corporation's "Best Offer".

28. It is the Association's position that many of the documents that are attached to this Complaint are incorrect or incomplete representations of the facts from bargaining.

29. The Association believes that the School Corporation is attempting to undermine the Association's bargaining rights as the exclusive representative and to turn members of the bargaining unit against the Association.

30. The School Corporation's actions are egregious, outrageous and in clear violation of Indiana law.

31. The School Corporation's actions constitute a bypass unfair practice pursuant to Ind. Code § 20-29-7-1(a)(1) in that they interfere with, restrain or coerce school employees in the exercise of rights guaranteed in Ind. Code § 20-29-4-1, specifically the right to participate in collective bargaining through representatives of their own choosing.

32. The School Corporation's actions are also a refusal to bargain unfair practice pursuant to Ind. Code § 20-29-7-1(a)(5)(A) and Ind. Code § 20-29-7-1(a)(6).

33. The Association has been damaged as a result of the School Corporation's unfair practices.

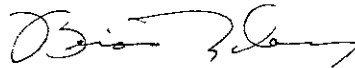
34. Because of the stage of bargaining the parties are currently engaged in, and the immediacy of the harm, the School Corporation's actions require immediate interlocutory relief.



WHEREFORE, Petitioners, Carmel Clay Education Association and Brian Lyday, by counsel, respectfully request interlocutory and permanent relief, including:

- (1) An order suspending the fact-finding proceedings until this request for interlocutory relief can be heard by IEERB;
- (2) An order finding the Respondent, Carmel Clay Schools, guilty of unfair practices;
- (3) An order that Carmel Clay Schools be ordered to cease and desist from further unfair practices;
- (4) An order that because of the School Corporation's egregious actions, the School Corporation's LBO be rejected and the Association's LBO be accepted; and
- (5) All other relief proper in the premises.

I AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE.



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Brian Lyday, President  
Carmel Clay Education Association

Respectfully submitted,

RILEY BENNET & EGLOFF, LLP



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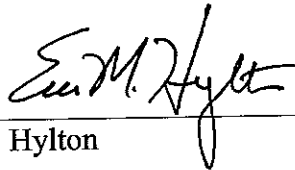
Eric M. Hylton, #20178-32  
Riley Bennett & Egloff, LLP  
Fourth Floor  
141 East Washington Street  
Indianapolis, IN 46204  
(317) 632-8000  
(317) 636-8027 facsimile

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the foregoing document has been served upon the following via United States, first class mail, postage prepaid on this the 3<sup>rd</sup> day of December, 2012:

Carmel Clay Schools  
5201 East 131<sup>st</sup> Street  
Carmel, IN 46033

David Day  
Seamus Boyce  
CHURCH CHURCH HITTLE & ANTRIM  
P.O. Box 10  
Noblesville, IN 46061

  
\_\_\_\_\_  
Eric M. Hylton

**BEFORE THE INDIANA EDUCATION  
EMPLOYMENT RELATIONS BOARD**

CARMEL CLAY EDUCATION ASSOCIATION,	)	
et al.,	)	
Complainants,	)	
and	)	IEERB Case No. U-12-04-3060
CARMEL CLAY SCHOOLS,	)	
Respondent.	)	

**ORDER**

Complainants, Carmel Clay Education Association ("Association") et al., by counsel, filed a Complaint for Unfair Practice and Request for Interlocutory Relief ("Complaint"), alleging unfair practices regarding pending impasse procedures. As a result, factfinding was suspended, and a summary hearing in front of the Board was set for December 14, 2012, to determine whether interlocutory relief should be granted.

Various motions filed by both sides prompted an emergency pre-hearing conference on December 7, 2012, which was continued to December 10, 2012. On December 10, 2012, the parties jointly requested that the interlocutory relief hearing be cancelled, a hearing examiner appointed to make a final judgment on the merits of the Complaint, and that the factfinding remain suspended pending a final decision on the Complaint. The parties agreed that discovery already served would be superseded by the appointment of a hearing examiner, and that they would not appeal the outcome of a factfinding based on timelines. The Association later filed Petitioner's Notice of Withdrawal of Request for Interlocutory Relief. Complainant's request for interlocutory relief is considered withdrawn.

With no request for interlocutory relief pending, the Chairman hereby cancels the summary hearing before the Board set for December 14, 2012 (see Cancellation of Board Meeting, attached). The Complaint is now transferred to a Hearing Examiner for a final decision on the merits pursuant to IC 20-29-7 (see Hearing Examiner Appointment Letter, attached). Due to pending impasse procedures, the Chairman requests that the Hearing Examiner handle the Complaint in an expedited fashion. Respondent is to file its Answer in accordance with 560 IAC 2-3-5.

The factfinding process between the parties continues to be suspended until further notice. The Chairman denies Respondent's Objection to Petitioners' First Request for Production of Documents and Other Discovery Requests, and denies Petitioners' Motion for Leave to Take Depositions.

So Ordered this 11<sup>th</sup> day of December, 2012.

  
Patrick W. Mapes, Chairman

Att. December 14, 2012 Board Meeting Cancellation; Hearing Examiner Appointment Letter

SEAL

**DISTRIBUTION SHEET**

Carmel Clay Education Association and Carmel Clay Schools  
IEERB Case No. U-12-04-3060

FAXED, EMAILED, and MAILED VIA US. Mail  
December 11, 2012

**Carmel Clay Education Association**

Eric M. Hylton, Counsel  
Riley Bennett & Egloff, LLP  
141 E Washington St 4<sup>th</sup> Floor  
Indianapolis IN 46204

**Carmel Clay Schools**

David Day, Counsel  
Church Church Hittle & Antrim  
Two North Ninth St  
Noblesville IN 46061

**IEERB Factfinder**

Sandra Jensen  
sss.us3@gmail.com

**IEERB Financial Consultant**

Rodger Smith  
resmith3\_99@yahoo.com



# STATE OF INDIANA

**Mitchell E. Daniels, Jr.**  
Governor

INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD  
INDIANA GOVERNMENT CENTER NORTH  
100 NORTH SENATE AVENUE, SUITE N1049  
INDIANAPOLIS, IN 46204-2211  
(317) 233-6620  
(317) 233-6632 FAX

December 11, 2012

Eric M. Hylton  
RILEY BENNETT & EGLOFF, LLP  
141 E Washington St 4<sup>th</sup> Floor  
Indianapolis IN 46204  
ehylton@rbelaw.com

David Day  
Amy A. Matthews  
CHURCH CHURCH HITTLE & ANTRIM  
PO Box 10  
Noblesville IN 46061  
day@cchalaw.com

Re: Complaint of Unfair Practice  
IEERB Case No. U-12-04-3060

Dear Mr. Day and Mr. Hylton:

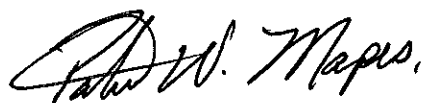
Bernard "Buddy" Pylitt has been appointed Hearing Examiner for the Indiana Education Employment Relations Board in the above-referenced case. The Case Administrator is Maureen Johnson, who can be contacted at (317) 233-6620 or [mjohnson@ieerb.IN.gov](mailto:mjohnson@ieerb.IN.gov).

Respondent's answer will be due in accordance with 560 IAC 2-3-5.

As this is an expedited case, requests for extension of time are strongly disfavored. Parties should not assume extensions will be granted, even if they are jointly requested. Parties requesting an extension of time must comply with 560 IAC 2-6-4, state whether the extension is agreed by the other party, and state the desired extension of time.

It is not proper for a party, or representative of a party, to engage in *ex parte* communications with a Hearing Examiner. Pleadings and communication should be in writing and served on the other party or other party's representative. For information on proper filing and service, see 560 IAC 2-6-1 and 560 IAC 2-7. IEERB's fax number is (317) 233-6632.

Sincerely yours,

A handwritten signature in black ink, reading "Patrick W. Mapes". The signature is fluid and cursive, with the first name "Patrick" and last name "Mapes" clearly legible.

Patrick W. Mapes  
Chairman

PWM:sg

Sent on December 11, 2012 by Email, Fax, and U.S. Mail

Enclosures (COMPLAINT/NOTICE OF APPEARANCE/S)

cc: Bernard "Buddy" Pylitt, Hearing Examiner  
Sarah Cudahy, IEERB General Counsel